

NEBRASKA SALES AND USE TAX GUIDE FOR FOOD, FOOD INGREDIENTS, AND DIETARY SUPPLEMENTS

OVERVIEW

Sales of items that are food and food ingredients are exempt from sales and use tax, **except** when sold through a vending machine or sold as prepared food by a restaurant, tavern, caterer, or concessionaire. Products containing the “Nutrition Facts” box on the product label are also sales tax exempt.

Dietary supplements, tobacco, and alcoholic beverages are not considered food or food ingredients. Sales of these products are subject to tax.

This information guide is intended to provide an overview. Nothing in this guide supersedes, alters, or otherwise changes any provisions of the Nebraska tax code, regulations, Nebraska Department of Revenue (Department) rulings, or court decisions.



This information guide may change with updated information or added examples. The Department recommends you do not print this guide. Instead, sign up for the subscription service at www.revenue.ne.gov to get updates on your topics of interest.

TERMS

Alcoholic Beverages. Alcoholic beverages are beverages that are suitable for human consumption and contain 0.5% or more of alcohol by volume.

Dietary Supplement. Dietary supplements are any products, other than tobacco, intended to supplement the diet which are identified by the “Supplement Facts” box found on the label. These products are required to be labeled as dietary supplements, pursuant to the Code of Federal Regulations, Title 21, Section 101.36.

- ❖ Dietary supplements contain one or more of the following dietary ingredients: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake and a concentrate, metabolite, constituent, extract, or combination of any of the above ingredients; and
- ❖ Dietary supplements are intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not intended for ingestion in this form, are not presented as conventional food and are not represented for use as the sole items of a meal or of the diet.

Examples of dietary supplements include amino acids, antioxidants, appetite suppressants, garlic capsules, herbal supplements, lecithin, vitamins and minerals, and zinc lozenges.

Food or Food Ingredients. Food or food ingredients are substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans, and are consumed for their taste or nutritional value (see [Reg-1-087, Food for Human Consumption](#)).

Food or food ingredients does not include alcoholic beverages, dietary supplements, or tobacco.

Tobacco. Tobacco means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

TAX EXEMPT SALES

Sales of food or food ingredients are exempt from tax, except when sold through a vending machine or when sold as prepared food by a restaurant, tavern, caterer, or concessionaire.

Examples of food or food ingredients include:

- Baby food and formulas;
- Bottled water;
- Breath mints;
- Bread;
- Butter;
- Cake mixes;
- Candy;
- Cereal;
- Chewing gum;
- Coffee;
- Cocktail mixes (nonalcoholic);
- Cooking wines;
- Deli salads;
- Donuts and pastries;
- Eggs;
- Fish;
- Flour;
- Frozen foods;
- Fruit;
- Gravy mixes;
- Health foods consumed in place of other foods and not as a vitamin or mineral supplement;
- Ice;
- Jelly;
- Meal substitutes, such as Ensure® or Slim Fast®.
- Meat;
- Meat and cheese trays;
- Milk;
- Nuts;
- Pectin;
- Pumpkins;
- Snack foods;
- Soups;
- Spices;
- Sugar;
- Tea;
- Vegetables; and
- Vegetable oil.

Nutrition Facts	
Serving Size 1 piece (219g)	
Servings Per Container 6	
Amount Per Serving	
Calories 520	Calories from Fat 240
% Daily Values*	
Total Fat 27g	41%
Saturated Fat 12g	61%
Cholesterol 255mg	86%
Sodium 1110mg	46%
Total Carbohydrate 29g	10%
Dietary Fiber 1g	5%
Sugars 1g	
Protein 39g	
Vitamin A 20%	Vitamin C 4%
Calcium 15%	Iron 25%
*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:	
	Calories: 2,000 2,500
Total Fat	Less than 65g 60g
Saturated Fat	Less than 20g 25g
Cholesterol	Less than 300mg 300mg
Sodium	Less than 2,400mg 2,400mg
Total Carbohydrate	300g 375g
Dietary Fiber	25g 30g
Calories per gram:	
Fat 9 • Carbohydrate 4 • Protein 4	

TAXABLE SALES

Alcoholic Beverages

Sales of alcoholic beverages are taxable, whether sold packaged as “off-sale,” or by-the-drink as “on-sale.” Bars, taverns, and restaurants that hold a liquor license are permitted to include the sales tax in the selling price of beverages that are consumed on their premises. Retailers and organizations which have been granted a Special Designated License for the sale of alcoholic liquor may also include the sales tax in the selling price of beverages consumed on property owned by governmental entities. Sales of soft drinks from these establishments may be treated in the same manner (see [Reg-1-040, Alcoholic Liquors Consumed on the Premises](#)).

For alcoholic beverages provided free-of-charge, the seller owes use tax on the cost of the beverages.

Dietary Supplements

Sales of dietary supplements are taxable. Dietary supplements are items that are identified by the “Supplement Facts” box found on the label of the product. Drink products, such as energy drinks, which are labeled with the Supplement Facts box are taxable. Drink products with the Nutrition Facts box are exempt as a food product.

Supplement Facts		
Serving Size: Two Tablets		
	Amount per Serving	% Daily Value
Vitamin A (as Beta Carotene)	25,000 IU	500
Vitamin C (as Ascorbic Acid)	1,000 mg	1670
Vitamin E (as Tocopheryl Succinate)	400 IU	1330
Zinc (as Zinc Gluconate)	50 mg	333
Copper (as Copper Gluconate)	2 mg	100
Selenium (as Selenomethionine)	50 mcg	71
Chromium (as Chromium Picolinate)	200 mcg	166
Citrus Bioflavonoid Complex	250 mg	*
Eyebright (Euphrasia officinalis)	50 mg	*
Alpha-Lipoic Acid	50 mg	*
Ginkgo Biloba	25 mg	*
L-Glutathione	10 mg	*
FloraGLO® Lutein (containing Zeaxanthin)	6 mg	*
*Daily Value not established		

Garden Seeds and Plants

Sales of garden seeds, bulbs, and plants which produce food products (for example, tomato and pepper plants, onion sets, fruit trees) are subject to sales tax, unless they are purchased with Supplemental Nutrition Assistance Program (SNAP) benefits.

Sales of seeds, bulbs, and plants which produce food products are sales tax exempt when sold to commercial producers.

Vending Machine Sales

All food and other items sold through a vending machine are subject to tax. The location of the machine determines the applicable **local** (city or county) **sales tax** that applies to the sales. Vending machine operators will include state and local sales tax in the selling price of the items in the machine. The sales tax does not have to be separately stated on vending machine sales (see [Reg-1-031, Coin-Operated Machines](#)).

Reporting the Tax

Sales tax that is included in the receipts from sales of alcoholic beverages and vending machine sales must be deducted from the total amount charged to determine the actual amount of the sale for reporting on "Gross Sales" line 1 of the [Nebraska and Local Sales and Use Tax Return, Form 10](#) (see [Reg-1-008, Records](#) for additional information on calculating taxable receipts).

Example 1. A tavern in a city with a local sales tax rate of 1% should calculate the amount of taxable sales and sales tax collected as follows:

Total receipts including tax @ 6.5%	\$1,278
(5.5% state + 1% local)	
Divided by one plus the tax rate	<u>÷ 1.065</u>
Taxable receipts	\$1,200
Total Receipts	\$1,278
Less: Taxable receipts	<u>- 1,200</u>
Sales tax collected	\$78

The tavern would report taxable sales of \$1,200 on its sales tax return and remit state sales tax of \$66 (\$1,200 x 5.5%), and local sales tax of \$12 (\$1,200 x 1%) for a total of \$78.

Deal-of-the-Day Certificates

The purchase of promotional "deal-of-the-day" certificates from advertisers, local radio stations, and newspapers are treated in the same manner as gift certificates. The purchase of the certificate is sales tax exempt.

When the promotional deal is redeemed by the customer, sales tax is calculated on the full selling price of the taxable sale. The amount of the promotional deal is then applied to the transaction.

Example 2. A \$50 deal-of-the-day certificate for a wine shop is purchased for \$25. Sales tax is not collected on this transaction. When the purchaser of the certificate redeems the certificate on his or her wine selection, sales tax is calculated as follows:

Purchase of wine	\$70.00 T
Sales tax (7%)	<u>+ 4.90</u>
Subtotal Due	\$74.90
Less - certificate	<u>- 50.00</u>
Net due from customer	\$24.90

The wine retailer would collect \$24.90 from the customer - \$20.00 for the sale of the wine and \$4.90 in sales tax. On the sales tax return, the retailer would report taxable sales of \$70 and remit states sales tax of \$3.85 (\$70 x 5.5%) and local sales tax of \$1.05 (\$70 x 1.5%) for a total of \$4.90.

Discounts and Coupons

Store Coupon. When a customer uses a coupon or a frequent-buyer card for a discount or a free product (for example, “buy one, get one free”) and a third party is **not** reimbursing the seller for the discounted amount, sales tax is due on the amount actually paid by the customer. In other words, the discount or coupon amount is sales tax exempt (see [Reg-1-037, Trading Stamps and Coupon Redemption](#)).

Example 3. ABC Supplement Shop, located where the state and local tax rate is 7%, advertises a 30% discount on the purchase of any regularly-priced item during the month of April. To claim the discount, customers must present a store coupon that was printed in local newspapers. A customer purchases a bottle of vitamins and presents the store coupon. Sales tax is calculated as follows:

Selling price of the vitamins	\$30.00 T
Less store coupon amount (30% x \$30)	<u>- 9.00</u>
Amount subject to tax	\$21.00
Sales tax (7% on \$21)	<u>+ 1.47</u>
Total Due	\$22.47

The retailer would report taxable sales of \$21 on its sales tax return and remit state sales tax of \$1.15 (\$21 x 5.5%) and local sales tax of \$.32 (\$21 x 1.5%) for a total of \$1.47.

Manufacturer’s Coupon. When a customer uses a manufacturer’s coupon for a discount or a free product and the seller **is** reimbursed by a third party for the discounted amount, sales tax is due on the full selling price of the product before subtracting the coupon amount. In other words, the discount or coupon amount is subject to sales tax.

Example 4. A manufacturer of paper towels advertises a \$.50 coupon in magazines. A retailer in a city where the state and local sales tax rate is 6.5% accepts the coupon and is reimbursed by the manufacturer for the amount of the coupon. When a customer makes a purchase of the paper towels and presents the manufacturer’s coupon to the retailer, sales tax is calculated as follows:

Selling price of paper towels	\$1.83 T
Sales tax (6.5% x \$1.83)	<u>+ 0.12</u>
Subtotal	\$1.95
Less - value of coupon	<u>- 0.50</u>
Total due from customer	\$1.45

Food Bundles

Food bundles, also referred to as “gift baskets,” are sales tax exempt if the value of the exempt food items is greater than the value of the nonfood items in the bundle. If the value of the nonfood items is greater than the value of the food items, the sale is subject to sales tax.

Example 5. A retailer offers a gift basket containing 3 items with individual selling prices as follows:

Basket	\$10 T
Cheese	8 E
Crackers	3 E
Wine	15 T
Total taxable products (\$10 + \$15)	\$25
Total exempt products (\$8 + \$3)	<u>+ 11</u>
Total selling price of all products	\$36

The selling price of the taxable products is greater than the selling price of the exempt products; therefore, the total selling price of the gift basket (\$36) is subject to tax. The retailer is located in a city where the state and local tax rate is 6.0%. The retailer would report taxable sales of \$36 on its sales tax return and remit state sales tax of \$1.98 (\$36 x 5.5%) and local sales tax of \$.18 (\$36 x .5%) for a total of \$2.16.

Sellers can determine whether the nontaxable or taxable items have a greater value based on either their cost of the individual items in the bundle, or the sales price of the individual items sold.

Tobacco

Sales of any tobacco products are subject to sales tax whether sold by a retailer or through a vending machine.

RESOURCE LIST

Information Guides

- ❖ [Nebraska Sales and Use Tax Guide for Bars, Taverns, and Restaurants](#)
- ❖ [Nebraska Sales and Use Tax Guide for Prepared Food and Beverage Service](#)

Nebraska Sales and Use Tax Regulations

- ❖ [Reg-1-008, Records](#)
- ❖ [Reg-1-031, Coin-Operated Machines](#)
- ❖ [Reg-1-040, Alcoholic Liquors Consumed on the Premises](#)
- ❖ [Reg-1-083, Food Service](#)
- ❖ [Reg-1-087, Food For Human Consumption](#)

Nebraska Statutes

- ❖ [Neb. Rev. Stat. § 77-2701.35, Sales Price, defined.](#)
- ❖ [Neb. Rev. Stat. § 77-2701.48, Bundled transaction, defined.](#)
- ❖ [Neb. Rev. Stat. § 77-2704.24, Food or food ingredients, exemptions.](#)

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